



FACT

FOUNDATION FOR
ACCOUNTABILITY
AND CIVIC TRUST

March 5, 2021

Omar Ashmawy
Chief Counsel
Office of Congressional Ethics
U.S. House of Representatives
P.O. Box 895
Washington, DC 20515-0895

Email: oce@mail.house.gov

Dear Mr. Ashmawy,

The Foundation for Accountability and Civic Trust (FACT) is a nonprofit organization dedicated to promoting accountability, ethics, and transparency in government and civic arenas. We request the Office of Congressional Ethics immediately investigate New Jersey Representative Tom Malinowski for violating United States House of Representatives ethics rules.

Federal law and House Ethics rules require Members to disclose financial information to the public, including financial disclosure reports that provide a “full and complete” statement of the Member’s assets, debts, and income, as well as periodic reports of financial transactions that exceed \$1,000.¹

Contrary to this legal requirement, it was recently reported that Representative Malinowski failed to publicly disclose about 90 stock trades worth between \$671,000 and \$2.76 million in 2020.² According to the reporting, Malinowski’s undisclosed stock trades included more than 24 purchases and sales during the first several weeks of the COVID-19 pandemic, and “his stock trade frequency peaked in March 2020. . . . One stock sale in March 2020 involved the shares of a medical diagnostic company [Chembio Diagnostics Inc.] that manufactures COVID-19 tests.”³

¹ 5 U.S.C. app 4 sec. 101-111 (disclosure requirements); sec. 102(a)(5) (requirement for disclosure of financial transactions over \$1,000); House Rule 26.

² Dave Levinthal, *Democratic Rep. Tom Malinowski, A Champion For Transparency, Failed To Disclose Dozens Of Stock Transactions Worth At Least \$671,000 In Apparent Violation Of Federal Law*, Business Insider, Mar. 4, 2021 (attached as Exhibit A).

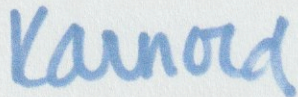
³ *Id.*

Although his office acknowledged it was an “oversight,”⁴ it is also a violation of the law that must have consequences.⁵ The disclosure requirements our elected officials must abide by are an integral part of an ethical and transparent government. Timely and accurate filing is the only method for citizens to determine whether Members have conflicts of interest or are wrongfully profiting from their position.⁶

This case is especially damaging to citizens’ confidence in elected officials. It appears Malinowski was secretly trading stocks related to a national crisis, which prevented the public from evaluating whether his transactions were based upon information he obtained from his official position. The OCE must investigate Malinowski’s stock trades and his failure to file the required disclosures, and impose appropriate sanctions including fines and penalties.

To the best of my knowledge and ability, all evidence submitted was not obtained in violation of any law, rule, or regulation. Further, I am aware that the False Statements Act, 18 U.S.C. § 1001, applies to information submitted to the Office of Congressional Ethics.

Sincerely,



Kendra Arnold
Executive Director, Foundation for Accountability & Civic Trust

⁴ *Id.*

⁵ The Ethics in Government Act does not allow Members to break the law without consequence. See, e.g., 5 U.S.C. app 4 sec. 104(a)(1) (providing for a civil penalty not to exceed \$50,000); sec. 104(a)(2) (making it unlawful for any person to knowingly and willfully fail to file or report any information required under section 102, with penalties of up to \$50,000 and imprisonment of not more than one year); sec. 104(d) (providing for a late filing fee of \$200); see also Committee on Ethics, U.S. House of Rep., available at <https://ethics.house.gov/financial-disclosure/general-information-about-financial-disclosure> (“A \$200 late filing fee shall be assessed against any individual who files more than 30 days after the due date of a report or amendment (or the due date of any extension).”).

⁶ It is a foundational principal and embodied in numerous laws and ethics rules that Members “should not in any way use their office for private gain.” House Ethics Manual, at 1; see also House Ethics Manual, at 123-24 (Members cannot use official resources for any campaign or political purpose).

Democratic Rep. Tom Malinowski, A Champion For Transparency, Failed To Disclose Dozens Of Stock Transactions Worth At Least \$671,000 In Apparent Violation Of Federal Law

Business Insider | [Dave Levinthal](#) | March 4, 2021

Government transparency has been a cornerstone of Rep. Tom Malinowski's congressional tenure.

But the two-term New Jersey Democrat failed to publicly disclose dozens of personal stock trades, an apparent violation of the federal [STOCK Act](#), according to an Insider review of US House financial documents and interviews with Malinowski's congressional office.

Malinowski's stock trades in 2020 included more than two-dozen purchases and sales during the first several weeks of the COVID-19 pandemic, according to a [five-page spreadsheet](#) Malinowski's office provided Insider on Wednesday after a reporter asked about his stock activity. The spreadsheet contains stock trade information that does not appear publicly on the US House's website, as required by law.

Malinowski's stock trade frequency peaked in March 2020, as the COVID-19 pandemic gripped the United States and caused the stock market to plummet. One stock sale in March 2020 involved the shares of a medical diagnostic company that manufactures COVID-19 tests, the spreadsheet indicates.

Taken together, Malinowski made at least \$671,000 and as much as \$2.76 million worth of trades during 2020, according to the spreadsheet. Members of Congress are only required to report the value of their stock assets in broad ranges, making a precise total elusive.

"Filing these disclosures late was an oversight that he is taking steps to correct," said Colston Reid, Malinowski's chief of staff.

"This was not an effort on the part of the congressman to conceal any trade activities," Malinowski spokesperson Amanda Osbourne added, separately.

Lawmakers may face a congressional investigation and fines if they don't properly disclose their stock trades.

The STOCK Act, which [became law in 2012](#), requires House members to file a publicly available "periodic transaction report" for any stock trades they make. Such reports must be made within 30 to 45 days of a purchase or sale, depending on the kind of trade. The Office of the Clerk of the House in turn publishes these reports [on the House's website](#).

Soon after Insider's inquiries, Malinowski's office said the congressman "very recently" filed all missing stock trade disclosures and should be fully up-to-date.

As of Thursday morning, Malinowski's 2020 stock disclosures did not appear within the US House's stock [disclosure database](#). "Successfully filed financial disclosure reports are updated daily," the Office of the Clerk of the House said in a statement Wednesday.

Tom Rust, chief counsel for the House Committee on Ethics, which is in charge of investigating House members for

potential violations of rules or statutes, declined to comment Wednesday.

Osbourne said the House Committee on Ethics had not contacted Malinowski as of Wednesday afternoon. Malinowski is willing to pay a fine if the House Ethics Committee determines he owes one, she said.

The independent, nonpartisan [Office of Congressional Ethics](#), which is empowered by the House to review accusations of congressional misconduct and make referrals to the House Committee on Ethics, could also review the matter.

Dozens of undisclosed stock trades

During 2020, Malinowski made about 90 financial trades, most of which were individual stocks, according to trade records his office provided Insider.

The congressman was mostly a buyer as the stock market tanked in March 2020 — 15 of the 22 trades the congressman said he made that month were purchases.

He invested up to \$100,000 in cereal maker [General Mills Inc.](#) and up to \$50,000 in the [J.M. Smucker Company](#), which sells numerous shelf-stable, quarantine-friendly products such as peanut butter, fruit spreads, and packaged snack food.

[Pepsico Inc.](#), [Kellogg Company](#), [Colgate-Palmolive](#), and property developer [Federal Realty Investment Trust](#) ranked among his other March 2020 stock purchases.

Malinowski on March 19 also sold up to \$15,000 worth of stock in New York-based [Chembio Diagnostics Inc.](#), an infectious disease testing company whose offerings include [COVID-19 testing kits](#).

Chembio Diagnostics' stock price closed at \$2.93 per share that day — a significant increase from its close of \$2.36 per share three days earlier when the stock hit a five-year low.

Chembio Diagnostic on March 20 [announced](#) it had secured a \$4 million purchase order from a Brazilian scientific foundation for its COVID-19 tests. The stock's price soared, closing above \$15.50 per share in late April before shedding much of its value since.

Later in 2020, the lawmaker purchased up to \$50,000 worth of shares in [Peloton Interactive Inc.](#), the home exercise equipment company, and up to \$50,000 worth of stock in luxury sports car maker [Ferrari N.V.](#), among many other stocks.

Osbourne, Malinowski's spokesperson, said the congressman does not make his own trades, but instead "has a financial advisor that makes trading decisions on his behalf without his regular input."

Federal records indicate that Malinowski also made dozens of other stock trades during 2019, but failed to publicly disclose them within the legally required 30-to-45-day disclosure window — or ever file periodic transaction reports for them.

Malinowski disclosed these 2019 stock trades in August 2020 as part of an [annual personal financial disclosure report](#) that all members of Congress must file.

'Committed to full transparency'

Malinowski, who served as [assistant secretary of state for democracy, human rights, and labor](#) during the Obama administration, defeated incumbent Republican Rep. Leonard Lance in 2018 to first win office.

The nonpartisan Cook Political Report last year rated Malinowski's New Jersey 7th District among the [most competitive](#) House districts in the nation, and in November, Malinowski [ultimately defeated](#) Republican challenger Thomas Kean Jr. by [just 5,311 votes](#) out of the nearly 434,000 cast.

Malinowski has in part built his career in elected politics on a platform of open government and financial transparency.

His 2020 campaign platform notes that the congressman "championed comprehensive reforms to limit the role of money in politics and increase transparency to ensure regular people — not corporations or special interests — have the strongest voices in Washington."

And since entering Congress in 2019, Malinowski has sponsored several bills regarding financial transparency and political money.

One required public companies to [obtain shareholder authorization](#) before making certain political expenditures. Another called for [creating a public database](#) to make transportation funding more transparent. A third targeted the finances of so-called "Scam PACs" — political committees that spend most of their money on non-political activities.

In light of Malinowski's stock disclosure failures, the congressman should personally "come out publicly and explain this," said Dylan Hedtler-Gaudette, government affairs manager for the nonpartisan Project on Government Oversight. "He should also take it upon himself to make a reform effort."

In a [letter to congressional leaders](#) in December, professors Donna Nagy and Richard Painter — two leading government reform advocates — argued that Congress should "ban senators, representatives, and their senior staff from owning securities in individual publicly traded companies."

Malinowski is "committed to full transparency with the public" and believes members of Congress should be required to maintain blind trusts if they invest in the stock market, said Reid, his chief of staff.

"In the absence of any such requirements, Congressman Malinowski is currently taking steps to establish a blind trust for himself," Reid said.

Several in Congress face stock-trade scrutiny

Malinowski isn't alone in his stock trade snafu: Several members of Congress or their immediate family members have in recent years made personal investments that range from curious to scandalous.

Most notorious of late: an insider trading brouhaha that led to [the conviction](#) and [imprisonment](#) of Republican Rep. Chris Collins of New York — until then-President Donald Trump [pardoned him](#) in December.

Others of note:

- House Speaker Nancy Pelosi's husband, businessman Paul Pelosi, in December [poured up to \\$1 million](#) into [call options](#) for stock of electric vehicle company Tesla. Nancy Pelosi, a California Democrat, has [previously](#) touted electric vehicles and environmentally friendly transportation options.
- Rep. Marjorie Taylor Greene, a Georgia Republican who's lambasted Facebook for anti-conservative bias, [cashed in on up to \\$210,000](#) in Big Tech stocks with her husband earlier this year — including Facebook stock, Sam Brodey of the Daily Beast reported.
- Sen. Dianne Feinstein, a California Democrat, [failed to properly disclose a stock purchase](#) of up to \$50,000 by her husband. She said she's willing to pay a fine.
- Sen. Gary Peters, a Michigan Democrat and outspoken environmentalist, [invested in a power company](#) that primarily uses coal and natural gas.
- Sen. Pat Toomey, a Pennsylvania Republican, disclosed that his son [purchased up to \\$15,000 in GameStop stock](#) during January at the height of the "[short squeeze](#)" fiasco, on which Congress has already [conducted hearings](#).
- Rep. John Yarmuth, a Kentucky Democrat, [purchased cannabis industry stock](#) while advocating for legalization legislation that could increase their value, reported Judd Legum of Popular Information.
- Former Sen. David Perdue, a Republican from Georgia, traded in the stocks of companies [represented by DC lobbyists](#) who conducted a campaign fundraiser for him in December.